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**IN THE  
COURT OF APPEALS OF INDIANA**

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JASON C. AMONETT,  
  
Appellant-Petitioner,

vs.

STATE OF INDIANA,  
  
Appellee-Respondent.

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No. 18A05-0710-PC-599

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APPEAL FROM THE DELAWARE CIRCUIT COURT  
The Honorable Richard A. Dailey, Judge  
Cause Nos. 18C02-0404-FC-11, 18C02-0401-FD-20, and 18C02-0409-FD-111

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**May 8, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**FRIEDLANDER, Judge**

Jason C. Amonett appeals the denial of his petition for post-conviction relief (the PCR petition) from the revocation of his probation. He presents the following restated issue for review: Did the post-conviction court err in denying the PCR petition?

We affirm.

Pursuant to a plea agreement that resolved a number of charges from three separate causes, on January 27, 2005, Amonett received an aggregate sentence of twelve years in prison. Execution of the sentence, however, was suspended on the condition that Amonett successfully complete the Delaware County Forensic Diversion Drug Court Program (the Program), as well as an additional three years of probation.

On January 9, 2006, the court was notified that Amonett had been arrested on a battery charge. Soon thereafter, his probation officer filed a petition to revoke probation for violation of the terms of the Program. At the probation revocation hearing on March 22, 2006, Amonett's wife testified that Amonett had committed the charged offense – that is, he battered her by means of a deadly weapon. In light of the evidence presented at the hearing, the court found that Amonett had violated the terms of his probation. The court revoked Amonett's probation and ordered him to serve the previously suspended term of twelve years in prison.

Thereafter, on January 25, 2007, Amonett filed the instant PCR petition in which he alleged:

I was charged in Cause Number 18C01-0611-FC-03 Battery By Means of A Deadly Weapon, and Habitual Offender. This was based on the allegation by my wife that I had battered her. She later recanted her story, and the charges were dismissed prior to trial. She testified at the evidentiary hearing, which resulted in my suspended sentence being

executed, but later recanted her testimony. She later stated that her earlier testimony, that I had battered her, was false.

*Appellant's Appendix* at 98. Following an evidentiary hearing at which Amonett was the sole witness, the court denied the PCR petition. Amonett's subsequent motion to correct error was also denied. Amonett now appeals.

In a post-conviction proceeding, the petitioner bears the burden of establishing his claims for relief by a preponderance of the evidence. *Overstreet v. State*, 877 N.E.2d 144 (Ind. 2007). When appealing from the denial of a PCR petition, the petitioner stands in the position of one appealing from a negative judgment and, therefore, must show that the evidence as a whole leads unerringly and unmistakably to a conclusion opposite that reached by the post-conviction court. *Id.* We further observe that the post-conviction court is the sole judge of the weight of the evidence and the credibility of witnesses. *J.J. v. State*, 858 N.E.2d 244 (Ind. Ct. App. 2006).

Amonett claims the evidence presented at the post-conviction hearing was uncontradicted that his wife had testified falsely at the previous hearing and that the criminal charges upon which revocation was based were later dismissed. He claims the post-conviction court erred in disregarding the uncontradicted testimony and evidence presented at the hearing.

The record reveals that Amonett's estranged wife was subpoenaed and available to testify at the post-conviction hearing, yet Amonett did not call her as a witness. Instead, the only evidence Amonett presented in support of his claim that his wife testified falsely

at the revocation hearing was his own self-serving, bald assertion that she did so.<sup>1</sup> The post-conviction court, however, expressly found Amonett's credibility in this regard lacking. This credibility determination was well within the post-conviction court's province, and we reject Amonett's invitation for us to judge his credibility. *See J.J. v. State*, 858 N.E.2d 244.

Further, the fact that the criminal charges upon which revocation was based were ultimately dismissed, which the State conceded below, is irrelevant. In fact, probation may be revoked even where the defendant is acquitted of the new charge. *See Thornton v. State*, 792 N.E.2d 94 (Ind. Ct. App. 2003). Moreover, we observe that the State could have dismissed the charge for any number of reasons in the instant case, and there is no indication in the record that the State did so because Amonett's wife had lied about the battery.

Amonett failed to present credible evidence to sustain his claim for relief. The post-conviction court was not required to believe his testimony, and we will not undertake to reexamine the post-conviction court's credibility assessment. In sum,

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<sup>1</sup> Amonett testified on direct examination in relevant part:

Q. Alright and state for the Judge your grounds for the post conviction relief that you're requesting at this time.

A. My grounds was [sic] that I was falsely accused of a crime that I didn't commit. I was put on Drug Court on the basis you know that I would complete a program which I was doing fine on and I was falsely arrested, falsely accused and now I'm behind bars for twelve years for a crime I didn't commit.

Q. Alright. You're saying that the allegations presented at the hearing on the petition to revoke were false?

A. Yes I do.

*Transcript at 6-7.*

Amonett has wholly failed to establish that the evidence unerringly and unmistakably leads to a conclusion opposite that reached by the post-conviction court.

Judgment affirmed.

KIRSCH, J., and BAILEY, J., concur.